

**Zoning Board of Appeals Minutes**

**January 25, 2018**

**Hearing #18-02**

**RECEIVED**

**18 FEB 20 PM 5:32**

**TOWN CLERK'S OFFICE  
ASTORIA, OR 97103**

Present for ZBA Board: Dave Perry (Chair), Mark Carlisle, Terry Girouard, Rich Archer  
Absent: Heather Carlisle, Cheryl Anderson

Present: Debbie Phillips, Esq. (Town Legal), Jeffery Aveni Esq. (Representing ASL Property), Seth Aitken, Esq. (Representing Carol Cormier), Ryan, Lisa, & Nathaniel Richey (4 Fitchburg Rd.), Carol Cormier (2 Fitchburg Rd.), Diane Dimacale (13 River Styx Rd), Jeff Perkins (5 River Styx Rd.), Leanne Roy (173 Packard Hill Rd.), Lisa Fitzgerald (22 Wood Path Rd.), Nancy & Donald Cosentina (11 Main St.), Robert Macleod (10 Main St.).

7:01 Dave opens meeting

18-02 – ASL Property is requesting a Variance – Section 3.24 (t)

ASL Property Service Variance request to operate a construction / excavation / home renovation / snow removal company, which would have storage of construction equipment and/or building materials on site of 3 Main Street (Map 62 Parcel 103)

Dave Perry read Variance request and explained application criteria for a variance.

- Special condition of land
- Hardship
- Consistent with intent of By Law
- Not harmful to neighborhood

Dave also explains that the approval of the variance will require 4 Votes from board, and also the process of appeal after decision is rendered.

Dave allows Jeff Aveni, Esq. the floor for his presentation to the board for 3 Main St.

Aveni introduces himself and begins to go over presentation, he addresses the criteria to grant variance, he has poster board (labeled exhibit 4-11 , & gives board a copy of hearing documents & exhibit list). He states how the building was built in 1946 and predates zoning, he shows that there is a tree buffer towards back, he states that garage front is close to road and not conducive for an automotive garage, and states that building materials would mostly be transient or stored inside.

Dave Perry asks for him to go over argument for specific variance criteria.

Aveni states that 1) the building predates zoning (1946 as commercial garage), 2) the property has been nonconforming when bylaws were adopted, 3) the uniqueness is that it has always been a garage in this neighborhood and was never a residency, and is not in direct center of town 4) the hardship is that ASL purchased property for the purpose of its central location as well as

intending to have the same or similar usage, and to have plowing truck close to assist with DPW (Aveni notes the letter marked #5 from Steve Nims).

Dave Perry notes that some of this information is new and will need to be reviewed by board.

Mark Carlisle asks for clarity of section # 10 of application, not sure what is meant by the garage being too close to road....and if ASL is planning on doing auto repair? And states that he does not think the distance to the road is a hardship.....

Terry clarifies that he does not believe that is what the statement is saying, that answer is stating that to continue use of an auto repair would not be conducive....

Aveni agrees with Terry and clarifies that it will not be used as an auto repair.

Dave Perry clarifies again that the variance is for section 3.24 (t), and asks Mark if he could clarify the intent of the bylaws for VCC and VCR seeing how he was a member of that board.

Mark states that the boards intent was to allow commercial opportunities while protecting neighborhood....as he remembers that the consideration to allow construction equipment was not allowed because the board felt there were other areas that would allow that and the center was to offer more shops and professional offices.

Dave clarifies that Mark is stating that the bylaws intent was not to have construction .

Mark confirms.

Aveni states that 3 Main Street is not in the middle of downtown.

Dave asks Aveni if he agrees that it is a change of use.

Aveni states yes.

Ken asks when the Precision Auto closed.

Diane Dimacale states she believes it was 4/5 years ago, but not positive.

Dave states that the town does not show any Business Certificate so we do not have an exact date. Dave asks Debbie if that would be an issue.

Debbie states she didn't think not having a business certificate with the town would be an issue.

Dave Perry asks the board if they have any other questions for the applicant.

Dave enters into the record exhibits from ASL Property. Dave also enters a letter from Patrick Harrington, an abutter that was sent to the board, which states his objection to the granting of the variance.

Dave then opens the meeting to the abutters.

Seth Aitken, Esq. introduces himself as representing Carol Cormier (2 Fitchburg) and William Cormier her son, and asks to read a letter from William Cormier.

Aveni objects, and has an issue with this letter from William because he is not an owner.

Ms. Cormier states that she is present and that Mr. Aitken as well as William are representing her, if needed she will read letter but requests not to.

Mrs. Cormier is present, and that Seth Aitken is representing her.

The board acknowledges that Seth Aitken is representing Mrs. Cormier.

He then reviews with the board the Cormier's issue as to the variance. The fact that ASL is already parking construction equipment in back yard, that the storage is in an open space and visible to abutters, and the fear that it will creep onto abutters land which is also a different zone (RA) should be considered, the fact that there is already a lot of trailers and debris on property and to add to it will make it worse.

Seth Aitken shows pictures of debris and trailers as well as construction equipment.

Dave enters into record.

Aitken also addresses the application where ASL states that they have fences and trees blocking abutters view is false. He states the arguments for variance have not been met, and that the argument this would help the DPW is false because the DPW already has an area for equipment.

Ken states that he would like to hear the letter from William (son of Mrs. Cormier). Dave Perry 2<sup>nd</sup>.

Aveni again states objection – that William has no standing and is not the owner.

The board agrees to letter being read and onto record, noting Aveni's objection.

Seth Aitken reads the letter.

Terry G. states for the record that his second visit to the site he was told that a lot of the debris and trailers were inherited with the purchase of the property. Terry asked for clarification.

Aveni agreed with that statement and also noted that ASL was working to clean up, and notes that there are invoices for what they have already removed.

Aveni then states and introduces a police report.....

Dave accepts into record.

Aitken Objects to the police report.

Aveni states that the report shows ulterior motive for William Cormier, and is in response to board accepting the letter to the record.

Dave states that although accepted really does not have standing on what is being asked for application, but that the board likes to have as much information as possible.

Dave then opens meeting to other abutters.

Leanne Roy states she is the owner of ASL, and want to clarify that they are not looking to create a mess, and in fact have been trying to clean up the mess that is there. She states that there has been issues but that they are working to correct them with neighbors. They are just looking to run their business.

Diane Dimacale states that she is not positive of date for when Precision Auto closed.

The board acknowledges that she was estimating to the best of her knowledge only.

Jeff Perkins (5 River Styx) – states that the previous use was never disruptive, and now there is a lot of heavy equipment, sometimes in front and is disruptive. He is not in favor. He also brings up that shame on town for not addressing previous violations if that was the case, and if they were violation why would the town allow it now.

Ryan Richey (4 Fitchburg) – states that since ASL purchased property that the noise / fumes and vehicles has bothered his family. States his family works 2<sup>nd</sup> /3<sup>rd</sup> shifts and this will be an issue for his family. He is not in favor.

Seth Aitken asks to introduce signatures of others objecting .

There is discussion of who signed it and if they are abutters.....Debbie does not recommend and states that all abutters are welcome to come to meeting.

Aveni objects based on the fact that there is no proof the signatures are valid and/or abutters.

Debbie does clarify that the process for a variance was followed correctly by applicant and that abutters were notified as to the hearing date and have the right to attend.

Mark, and Ken agree that the signatures should not be entered to the record.

Dave states that Seth cannot submit signatures.

Aveni responds to some of the comments. He states that the by-laws do not specifically talk about visual impact. That ASL should not be punished for what the previous owner created, and that ASL is going through the correct process, and will continue to work hard to clean up area.

Recess 8:15

Reopen 8:25

Aitken responds stating that although aesthetic conditions may not be legally relevant however quality of life for neighbors is and in the application for a variance (#8) asks about visual and sound buffers therefor it should be considered.

Leanne Roy states again that there is a lot of information but asks the board to only look at the application and request for variance.

Lisa Richey (4 Fitchburg)- states that she has lived there for 16 years and noise and fumes were never an issue, now fumes /noise as well as that area being visible is an issue. She asks exactly where vehicles would be. She states her house is close to where she thinks the vehicles will be. She is concerned that vehicles will be starting and running at any hour of the day (snow plowing) and she is not in favor.

Aveni clarifies that on paper marked exhibit 6 that a resident Ms. Pond has submitted a letter stating that she has not heard excessive noise.

Dave Perry then explains again the process the board has as well as the process for an appeal once a decision is rendered.

Dave states the board has 90 days from application to make a decision. Dave asks if there is any other information, and states that he thinks they should deliberate on another dates because there is a lot of information to review.

Dave makes a motion to close the hearing and deliberate on another date.

Rich 2<sup>nd</sup>, all approved.

Meeting closed at 8:37pm.

Next meeting for deliberation will be February 7, 2018 at 7:00 pm in the Lower Meeting Room.

Respectfully submitted by:  
Heather Ruziak, Land Use Administrator